

September 16, 1999

Mary Cottrell, Secretary

Massachusetts Department of

Telecommunications and Energy

One South Station 720 Atlantic Ave, 2nd Floor

Boston, Massachusetts 02110

**Re: D.T.E. 98-36, Rulemaking To Establish Complaint and Enforcement
Procedures To Ensure That Telecommunications Carriers and Cable Systems
Operators Have Non-Discriminatory Access To Utility Poles, Ducts, Conduits, and
Rights of Way As Required by Section 224 of the Telecommunications Act of 1996**

Dear Ms. Cottrell:

On behalf of the members of the Competitive Telecommunications Association ("CompTel"), I am writing to express our support for the Department's proposed rulemaking to address nondiscriminatory access to utility poles, ducts, conduits and rights-of-way by competitive telecommunications providers. Although CompTel did not file comments originally in this proceeding, it respectfully requests that the Department accept this letter into the record in light of the Commission's request that parties update the record..

CompTel is a national industry association representing competitive telecommunications providers. CompTel's 350 members include numerous facilities-based CLECs (both wireline and wireless) employing all types of technologies and entry strategies. It is critical for these CLECs to have non-discriminatory and cost-based access to the multiple dwelling units (MDUs) in which their customers live and do business in order to compete most aggressively against the local exchange monopolies of the incumbent local exchange carriers ("ILECs").

CompTel supports the efforts of the Department to align its rules with Section 224 of the 1996 Telecommunications Act. Such action is necessary, given that competitors continue to experience problems in gaining non-discriminatory access to rights-of-way, including access to MDUs, in Massachusetts and other states. In its recent comments filed in FCC's rulemaking on building access⁽¹⁾ (attached) , CompTel identified many of those problems. To address these problems, CompTel offered several proposals. Those proposals included:

- requiring an ILEC to make any and all of its MDU access rights available to CLECs, including but not limited to the network interconnection device, ducts and conduit, riser cable, rooftop facilities and access, and inside wiring;
- requiring an ILEC upon request of a requesting carrier to provide that carrier with any contracts in the ILEC's possession that establish or affect the ILEC's access rights to all or part of a MDU;
- in situations where an ILEC already has access to a MDU other than through a written contract, requiring the ILEC to convert its access rights into written agreements with the MDU owner or other appropriate party;
- requiring a ILEC to include a provision in all new contracts which establishes a right to install a rooftop antenna as well as related facilities necessary to provide services to all tenants in the MDU;
- prohibiting a ILEC from entering into or otherwise accepting access arrangements for a MDU that are more favorable to them than the access arrangements which are offered or available to CLECs. This policy should affect all material aspects of the access arrangements, including the type, nature and scope of access, duration, effective date, payments from one party to another party, ownership of in-building

equipment and plant, and other factors implementing and enforcing a strong non-discrimination policy against ILECs;

- prohibiting exclusive access arrangements negotiated by any carrier - either an ILEC or a CLEC - with a MDU owner or management company.

CompTel urges the DTE to consider these proposals in the context of its proceeding. Absent vigorous rules to ensure that competitors have nondiscriminatory access to rights-of-way, including MDUs, consumers in Massachusetts will be denied the benefits of competitive choice to which they are entitled under the 1996 Telecommunications Act and which the DTE has worked so hard to bring about.

Sincerely,

Terry Monroe

Vice President, State Affairs

Attachment

1. WT Docket No. 99-217, In the Matter of Promotion of Competitive Networks In Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules To Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed To Provide Fixed Wireless Services Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules To Preempt State and Local Imposition of Discriminatory And/Or Excessive Taxes And Assessments; CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act, comments filed July __ 1999.

Of 1996)